fendant and for her benefit, these cases are not applicable to the case before us."

The liability of the owner of an automobile for the negligence of a chauffeur furnished by a garage is noted in the current volume at p. 64.

Master and Servant—Liability to Third Person—Newsboy Throwing Folded Paper.—The appellee in the case of Houston Chronicle Pub. Co. *v.* Lemmon (Tex. Civ. App.), 193 S. W. 347, was sitting upon the porch of No. 2408 La Branch Street, Houston, Texas, when according to her allegations, an employee of the appellant, whose duty it was to deliver papers daily, "in the performance of such duty, twisted one of said papers tightly together so that it formed a compact projectile, which could be thrown to a great distance, and negligently, and with great force threw said paper toward and upon said porch where appellee was sitting, striking her." As a result of the blow appellee was seriously and permanently injured, so she sued the company for damages.

The company pleaded that the paper was delivered in the same manner that it had delivered papers for ten years, and which by long experience has been found to be safe, efficient, and expeditious; that it is well-nigh the universal custom among newspaper managers to have boys move rapidly from one part of the city to another and throw papers into yards or onto the porch or steps of residences, and pleaded that such method of delivery is the only one necessarily available, and that if plaintiff was injured, such injury was the result of an accident against which skill, care, and foresight could not provide, and which was not possible to be foreseen, and the injury and accident was not such that it might necessarily have been expected to have occurred. It requested the court to give a peremptory instruction in its favor, "because the evidence indisputably shows that more than 20,000,000 papers had been delivered in the same manner as the one in question in this suit, without injury following to any one." The court said, "The fact that the appellant had caused 20,000,000 papers to be delivered by boys throwing them into the yards and upon the porches of subscribers, and that such manner of delivery was practically the universal manner of making such deliveries by publishers, and that no injury to any person, similar to that of appellee, had theretofore occurred, so far as known, is not disputed. But such admission is not an admission that to throw a tightly rolled paper, so as to make it a compact body, 75 or 100 feet among and upon women and children, was not an act of negligence. The existing conditions and surroundings at the time of the throwing of such papers we think should be considered in determining whether or not such throwing was negli-

gence upon the part of the thrower. We think there was sufficient evidence to support the finding by the jury that the act of the delivery boy in this case throwing said paper under the conditions and surroundings shown to have existed at the time and place of the alleged accident was negligence, and that a person in the exercise of ordinary care and prudence might reasonably have anticipated that some injury to some of those shown by the evidence to have been on the porch might result from such act."

Upon the trial there was a verdict for plaintiff for $10,000. As to this the court said:

"While it is to be regretted that such serious and unusual damage resulted from such seemingly slight act of negligence on the part of appellant's delivery boy, we are not for that reason alone authorized to reverse the judgment based upon the findings of a jury supported by evidence."

Money Lent—Expectation of Marriage—Form of Remedy to Recover.—In Burke *v.* Nutter, in the Supreme Court of Appeals of West Virginia (March, 1917, 91 S. E. 812), it was held, according to the syllabus by the court, that "money advanced by plaintiff to defendant, to whom he is then engaged to be married, and in expectation of marriage, whether understood and intended as a loan or a gift, is recoverable in assumpsit upon the common counts if the defendant thereafter breaks the engagement without plaintiff's fault." On this point the court said:

"Counsel for defendant insist that the proof shows the money was given in consideration of marriage, and, being so given, it cannot be recovered on the common counts, but must be recovered, if recoverable at all, only on a special count alleging breach of promise. Both parties admit the engagement, and that they had agreed to marry in July, 1914. In some of his letters to defendant plaintiff addressed her as 'dear wife,' and in some of her letters to him she signs as 'wife.' But she admits, in her testimony, she had no intention at any time of carrying out her promise of marriage. So that if she obtained the money as a gift, she obtained it fraudulently, and no authority need be cited to support the proposition that money fraudulently obtained may be recovered in assumpsit. Hence, whether the transaction was a loan, or a gift in consideration of marriage to be thereafter consummated, is immaterial, because, upon either theory, the present action is maintainable. If the money was a gift, it was made in consideration of marriage, and was fraudulently obtained, according to defendant's own admission, and it would be unconscionable to allow her to retain it after having broken her contract to marry plaintiff."